

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBBINS ENTERTAINMENT LLC, SONY BMG
MUSIC ENTERTAINMENT and ROCKS LLC,

Plaintiffs,

-against-

KOCH ENTERTAINMENT DISTRIBUTION,
SHERIDAN SQUARE ENTERTAINMENT, INC., and
MUSICRAMA, INC.

Defendants.

x

:

: Civ. Action No.:
: 07 Civ. 9236 (NRB)

:

:

:

:

:

: **ANSWER OF DEFENDANT**
: **MUSICRAMA, INC.**

:

:

:

x

Defendant Musicrama, Inc. ("Musicrama"), by its attorneys, Caplan & Ross, LLP, for its
Answer to the Complaint herein, alleges as follows:

1. Defendant admits that Plaintiffs purport to assert claims of copyright infringement
and unfair competition, and otherwise states that paragraph 1 of the Complaint contains legal
conclusions to which no response is required.

2. Defendant admits that Plaintiffs purport to assert claims under the Copyright Act,
the Lanham Act, New York General Business Law, and the common law of the State of New
York, and otherwise states that paragraph 2 of the Complaint contains legal conclusions to which
no response is required.

3. Defendant admits that Plaintiffs purport to assert that this Court has jurisdiction of
this action under the Copyright Act and the Lanham Act, and has supplemental jurisdiction
pursuant to 28 U.S.C. § 1367(a), and otherwise states that paragraph 3 of the Complaint contains
legal conclusions to which no response is required.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint as to the other Defendants herein and denies as to Defendant Musicrama.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint, except admits that Plaintiff has attached Certificates of Copyright Registration to the Complaint as Exhibit 1 and respectfully refers the Court thereto for their content and meaning.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint, except admits that Plaintiff has attached Certificates of Copyright Registration to the Complaint as Exhibit 2 and respectfully refers the Court thereto for their content and meaning.

9. Admits the allegations contained in paragraph 9 of the Complaint.

10. Admits the allegations contained in paragraph 10 of the Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint, except admits that Koch is the exclusive third party distributor of Musicrama.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint.

20. Denies the allegations contained in paragraph 20 of the complaint, except admits that Musicrama received copies of a Cascada album from, and pursuant to an agreement with, EQ Music, which copies were then distributed by Koch.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint, and otherwise states that it contains legal conclusions to which no response is required.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint as it pertains to Co-Defendants Koch and

Sheridan Square, and otherwise denies the allegations contained in paragraph 22, but admits that subsequent to receiving notice from Plaintiffs, the subject album was no longer distributed.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint as it pertains to Co-Defendants Koch and Sheridan Square, and otherwise denies the allegations contained in paragraph 23, but admits that subsequent to receiving notice from Plaintiffs, the subject album was no longer distributed.

24. Denies the allegations contained in paragraph 24 of the Complaint.

25. Repeats and realleges each and every response set forth above in paragraphs numbered 1 through 24 with the same force and effect as if fully set forth herein.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint.

27. Denies the allegations contained in Paragraph 27 of the Complaint, and otherwise states that it contains legal conclusions to which no response is required.

28. Repeats and realleges each and every response set forth above in paragraphs numbered 1 through 24 with the same force and effect as if fully set forth herein.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint.

30. Denies the allegations contained in Paragraph 30 of the Complaint, and otherwise states that it contains legal conclusions to which no response is required.

31. Repeats and realleges each and every response set forth above in paragraphs numbered 1 through 24 with the same force and effect as if fully set forth herein.

32. Denies the allegations contained in paragraph 32 of the Complaint, except admits that Musicrama received copies of a Cascada album from, and pursuant to an agreement with EQ Music, which copies were then distributed by Koch.

33. Denies the allegations contained in paragraph 33 of the Complaint.

34. Denies the allegations contained in paragraph 34 of the Complaint.

35. Repeats and realleges each and every response set forth above in paragraphs numbered 1 through 24 with the same force and effect as if fully set forth herein.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint.

37. Denies the allegations contained in paragraph 37 of the Complaint.

38. Denies the allegations contained in paragraph 38 of the Complaint.

39. Repeats and realleges each and every response set forth above in paragraphs numbered 1 through 24 with the same force and effect as if fully set forth herein.

40. Denies the allegations contained in paragraph 40 of the Complaint.

41. Denies the allegations contained in paragraph 41 of the Complaint.

42. Denies the allegations contained in paragraph 42 of the Complaint.

43. Repeats and realleges each and every response set forth above in paragraphs numbered 1 through 24 with the same force and effect as if fully set forth herein.

44. Denies the allegations contained in paragraph 44 of the Complaint.

45. Denies the allegations contained in paragraph 45 of the Complaint.

46. Repeats and realleges each and every response set forth above in paragraphs numbered 1 through 24 with the same force and effect as if fully set forth herein.

47. Denies the allegations contained in paragraph 47 of the Complaint.

48. Denies the allegations contained in paragraph 48 of the Complaint.

49. Denies the allegations contained in paragraph 49 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against Musicrama, Inc. upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs have failed to join EQ as an indispensable party to this action.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' state and common law claims asserted against Musicrama, Inc. are preempted by the United States Copyright Act.

FOURTH AFFIRMATIVE DEFENSE

Defendant Musicrama received license authority with respect to its conduct alleged herein.

FIFTH AFFIRMATIVE DEFENSE

By reason of Defendant's voluntary cessation, Plaintiffs are not entitled to any injunctive relief against Musicrama.

SIXTH AFFIRMATIVE DEFENSE

To the extent Musicrama is found liable to any Plaintiff, its conduct was not willful, and it acted in good faith.

SEVENTH AFFIRMATIVE DEFENSE

Pursuant to 17 U.S.C. § 412, Plaintiffs are not entitled to an award of attorney's fees.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs claims are barred in whole or in part by the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs claims are barred in whole or in part by the doctrine of estoppel.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs claims are barred in whole or in part by the doctrine of waiver.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs claims are barred in whole or in part by reason of the first sale doctrine.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs claims are barred in whole or in part by reason of the doctrine of implied consent.

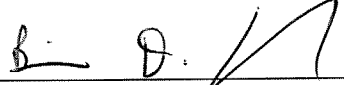
THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs have no valid copyright or license.

WHEREFORE, Musicrama, Inc. respectfully requests that a Judgment be entered dismissing the Complaint as against it, and awarding Musicrama, Inc. its costs and disbursements incurred in defending this action, including its reasonable attorneys' fees, and granting Musicrama, Inc. such other, further and different relief as the Court deems just and proper.

Dated: New York, New York
December 17, 2007

CAPLAN & ROSS, LLP

By: 
Brian D. Caplan (BC 1713)
Jonathan J. Ross (JR 0581)
100 Park Avenue, 18th Floor
New York, New York 10017
(212) 973-2376
Attorneys for Defendant Musicrama, Inc.

To: Richard P. Swanson
Eleanor M. Lackman
ARNOLD & PORTER LLP
845 Third Avenue, Suite 1400
New York, New York 10022
Attorneys for Plaintiffs

Tinamarie Franzoni
MEIER FRANZINO & SCHER, LLP
570 Lexington Avenue, 26th Floor
New York, New York 10022
Attorneys for Defendant Sheridan Square Entertainment, Inc.

Daniel J. Aaron
Koch Entertainment Distribution
437 Madison Avenue, 4th Floor
New York, New York 10022
Attorneys for Defendant Koch Entertainment Distribution

CERTIFICATE OF SERVICE


I, Nicole L. Mondschein, hereby certify that on December 17, 2007, I caused to be served a true and correct copy of the within Answer of Defendant Musicrama, Inc., dated December 17, 2007, by First Class Mail, upon the following:

Richard P. Swanson
Eleanor M. Lackman
ARNOLD & PORTER LLP
845 Third Avenue, Suite 1400
New York, New York 10022

Tinamarie Franzoni
MEIER FRANZINO & SCHER, LLP
570 Lexington Avenue, 26th Floor
New York, New York 10022
Attorneys for Defendant Sheridan Square Entertainment, Inc.

Daniel J. Aaron
Koch Entertainment Distribution
437 Madison Avenue, 4th Floor
New York, New York 10022
Attorneys for Defendant Koch Entertainment Distribution

Dated: December 17, 2007
New York, New York



Nicole L. Mondschein (NM 5610)